

*JLW*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

*[Handwritten circle]*  
**FILED**

FRANCISCO PEREIRA, on behalf of :  
himself and all others similarly :  
situated, :

Plaintiff, :

v. :

FOOT LOCKER, INC.; DOES 1 through :  
10, inclusive, :

Defendants. :

CIVIL ACTION

No. 07-cv-2157

SEP 15 2009  
*[Signature]*  
MICHAEL E. KUNZ, Clerk  
By *[Signature]* Dep. Clerk

ORDER

AND NOW, this *11<sup>th</sup>* day of September, 2009, upon consideration of the Plaintiff's Motion for Conditional Collective Certification pursuant to 29 U.S.C. § 216(b) (Doc. No. 53), Plaintiff's Motion for Class Action Certification pursuant to Fed. R. C. P. 23 (Doc. No. 50), Defendant's Response in Opposition (Doc. No. 66), Plaintiff's Reply (Doc. No. 85), Defendant's Surreply (Doc. No. 89), Plaintiff's Rebuttal Memorandum (Doc. No. 93), Plaintiff's Notice of Filing Supplemental Evidence (Doc. No. 100) and Defendant's Response to Plaintiff's Second Notice of Filing Supplemental Evidence (Doc. No. 103), and for the reasons set forth in the attached Memorandum, it is hereby ORDERED that Plaintiff's Motion for Conditional Collective Certification pursuant to 29 U.S.C. §216(b) is GRANTED and Plaintiff's Motion for Class Action Certification pursuant to Fed. R. Civ. P. 23 is DENIED without

prejudice. It is further ORDERED as follows:

1. Plaintiff's FLSA claims SHALL proceed as conditionally certified collective action, under 29 U.S.C. § 216(b), on behalf of all persons who were, or are employed by Defendant throughout the United States as non-exempt employees, including Sales Associates, Stock Persons and Cashiers, but excluding Assistant Managers (collectively "Retail Employees") at any time from the date three (3) years prior to the mailing date of the Notice to the present.
2. Defendant SHALL produce to Plaintiff's counsel an electronic list, in Microsoft Excel if possible, of names and last known addresses of all persons described above within thirty (30) days of the entry date of this Order. Defendant SHALL further produce to Plaintiff's counsel within seven (7) days of any request by Plaintiff's counsel all telephone numbers Defendant might have (if any) for any person described above in the collective action whose FLSA Notice is returned by the Post Office as undeliverable.<sup>9</sup>
3. Parties SHALL meet and confer as to the proposed wording and form of the Notice and SHALL present a joint, proposed Notice to this Court within thirty (30) days of the entry date of this Order.

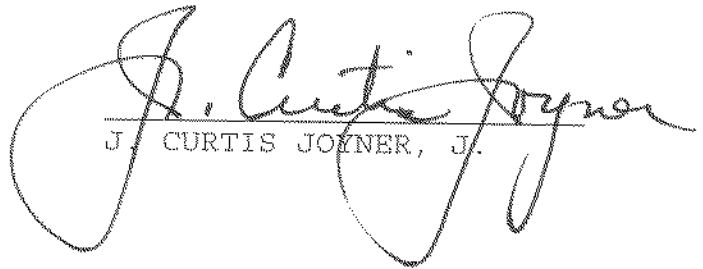
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<sup>9</sup>Use and possession of the information provided by Defendant shall be used solely for the purpose of providing notice of this action to persons entitled to file Plaintiff Consent to Sue Forms.

4. Following approval of Notice by this Court, Defendant shall post a copy of the approved FLSA Notice in each of its retail locations in an employee area in a conspicuous place for its Retail Employees to view.

5. In order to be considered timely filed, the Consent to Sue Form must be received and filed with this Court no later than ninety (90) days after the date on which the FLSA Notice is mailed by Plaintiff's counsel.

BY THE COURT:



J. CURTIS JOYNER, J.